

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ANTHONY-ALLEN FLOYDD, a/k/a
ANTONIO HOLLOWAY,

Defendant-Appellant.

UNPUBLISHED
February 28, 2006

No. 258099
Wayne Circuit Court
LC No. 04-006934-01

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for carrying a concealed weapon, MCL 750.227, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to twenty-three months to five years' imprisonment for the carrying a concealed weapon conviction, twenty-three months to five years' imprisonment for the felon in possession of a firearm conviction, and to a consecutive sentence of two years' imprisonment for the felony-firearm conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that there was insufficient evidence to convict him of carrying a concealed weapon; and, therefore, his felon in possession of a firearm and felony-firearm convictions should be reversed. We disagree. When reviewing a claim of insufficiency of the evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the evidence "in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003). In doing so, "circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of the crime." *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

Under Michigan law, to establish carrying a weapon in a vehicle, the prosecution must show: (1) a weapon in a vehicle operated or occupied by the defendant, (2) knowledge of its presence by defendant, and (3) that he was "carrying" the weapon. *People v Nimeth*, 236 Mich App 616, 622; 601 NW2d 393 (1999). Since there is no dispute that a firearm was found in the vehicle in which defendant was a passenger, the primary issue on appeal is whether there was sufficient evidence to find that defendant was in possession of the firearm seized in the backseat of the vehicle in which defendant was a passenger. It is well settled that possession may be

actual or constructive. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). In the absence of actual possession, a person may constructively possess a firearm “if the location of the weapon is known and it is reasonably accessible to the defendant.” *Id.* A person may also have constructive possession “if there is proximity to the article together with indicia of control.” *Id.*

Defendant’s argument, that the evidence presented by the prosecution failed to connect him to the firearm, and mere presence in the vicinity from which the firearm was found does not equate to constructive possession, is without merit. When the vehicle, in which defendant was a backseat passenger, was searched, a .38 caliber firearm was recovered from the backseat. The firearm was sticking out of the backseat, between the back part of the seat and the lower part of the seat, thus establishing proximity to defendant. The bullets found in defendant’s jacket pocket were the same make as the gun and matched the bullet found in the gun. In addition, defendant’s reasoning for carrying the bullets on his person is unsupported. Defendant asserts that he was only in possession of the bullets because his uncle gave them to him, to give to the driver of the vehicle. Defendant maintains that his uncle put the bullets in his jacket pocket before he left the house and when he first entered the vehicle he did not immediately give the bullets to the driver because he entered on the passenger side of the vehicle and the music was up, so he did not think of giving the bullets to the driver at that point. To further this argument, defendant asserts that he was in the vehicle for a relatively short period of time before being pulled over by the police. However, the evidence establishes that defendant was the only passenger in the backseat of the vehicle, and therefore, he was seated in the closest proximity to where the firearm was found. In addition, defendant was the only one who had bullets on their person. Although mere presence in the vicinity from which a firearm is found does not equate with possession, when viewing the evidence as a whole, and in the light most favorable to the prosecution, the evidence presented is sufficient to infer constructive possession.

Defendant further argues that he did not own the vehicle and the bullets found in his jacket pocket would fit in any .38 caliber firearm. However, these arguments are not determinative to the issue presented since ownership of the vehicle is not a prerequisite to possession of a firearm within the vehicle and the evidence sufficiently showed that the bullets found in defendant’s pocket were the same make as the gun and matched the bullet in the gun that was recovered from the backseat of the vehicle. Defendant also argues that his fingerprints were not found on the firearm. However, the lack of fingerprint evidence is due to the inability to find usable fingerprints on the firearm, not just defendant’s fingerprints.

The prosecution sufficiently established the elements necessary for a conviction for carrying a concealed weapon, i.e., the presence of a firearm in the vehicle occupied by defendant, that defendant knew of the firearm or was aware of its presence and that he was in possession of the firearm. Since it is reasonable for a jury to infer possession based on the evidence presented, the elements for defendant’s other convictions for felon in possession and felony-firearm have been met as well.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald